

REMARKS

These Remarks are responsive to the Office Action mailed on November 26, 2007 (“Office Action”). In this response, claims 1 and 7 have been amended to correct typographical errors. No new matter has been added. Entry of the amendments to claims 1 and 7 is respectfully requested. Applicant respectfully requests reconsideration of the rejections of claims 1, 5-7, 11-13 and 17-18 for at least the following reasons.

I. THE IMPROPER ISSUANCE OF THE FINAL REJECTION

On page 2, the Response to Amendment section of the Office Action, the Examiner asserts that Applicant’s arguments with respect to the prior art have been considered but are moot in view of the new ground(s) of rejection. Applicant respectfully disagrees. On pages 3-5 of the Non-Final Office Action dated June 1, 2007, the Examiner rejected claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over Kamiya et al. 2002/0106086 A1 in view of Ichikawa U.S. Patent No. 5,872,846. In the Amendment submitted by the Applicant dated August 31, 2007, claim limitations of claims 2-4 are incorporated into independent claim 1, claim limitations of claims 8-10 are incorporated into independent claim 7, and claim limitations of claims 14-16 are incorporated into independent claim 13 and no new matter has been added. Applicant respectfully submits that Applicant’s amendment dated August 31, 2007, does not necessitate the new ground of rejection presented in the Office Action, since claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Kamiya et al. 2002/0106086 A1 in view of Ichikawa U.S. Patent No. 5,872,846. Therefore, Applicant respectfully requests that the Examiner withdraw the Finality of the Office Action.

II. THE ANTICIPATION REJECTION OF CLAIMS 1 AND 9-11

On pages 2 of the Office Action, claims 1, 5-7, 11-13, and 17-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kikinis (U.S. Patent No. 6,289,389). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id.. “In addition, the prior art reference must be enabling.” Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claim 1, the Examiner asserts that Kikinis discloses the claimed invention. However, Applicant respectfully submits that Kikinis fails to disclose, or even suggest, “selecting and addressing said first set of data packets for transmission via the Internet” and “selecting and addressing said second set of data packets for transmission via a satellite delivery system,” as presently claimed. In contrast, Kikinis discloses data can be sent back to the user over either a satellite connection or back over the land connection. *See*, e.g., column 4, lines 62-64. More specifically, Kikinis discloses “a decision is then made as to whether, in this particular

embodiment, the land-based path or the satellite path will be faster for that size of packet at that particular time. If it is determined that the land-based path is faster, then the data packet is sent over to the user via digital link 20, PSTN cloud 15 and link 18 through analog modem 17 and into PC 19 of FIG. 1. If, however, it is determined that the satellite path would be faster, then the data packet is sent to up-link server 31 via link 53 of FIG. 1.” *See, e.g.,* column 6, lines 19-28. Therefore, Kikinis discloses the transmission path for data is determined by APPP driver 59 based on latency period of the land-based path and the satellite path and fails to disclose, or even suggest, “selecting and addressing said first set of data packets for transmission via the Internet” and “selecting and addressing said second set of data packets for transmission via a satellite delivery system,” as presently claimed.

Also, Applicant respectfully submits that Kikinis fails to disclose, or even suggest, “transmitting said first set of data packet via the Internet; and transmitting said second set of data packets via the satellite delivery system,” as presently claimed. Instead, Kikinis discloses a decryption key (a second set of data packets) may be sent back to the user via digital link 53 of FIG. 1 to proxy-server 29 and back through digital link 20, PSTN cloud 15, analog link 18 through analog modem 17 and into the users PC.” *See, e.g.,* column 6, lines 34-37. Further, Kikinis discloses “the data packet (first set of data packet) proceeds through digital link 55 to satellite sending dish 45 where it is broadcast to home receiving dish 23, where it is picked up by satellite modem 21 through cable 27 and downloaded into PC 19.” *See, e.g.,* column 6, lines 39-42. In addition, nowhere does Kikinis disclose, or even suggest, transmitting data via the Internet. It appears that the Examiner interprets digital link 20, PSTN cloud 15, analog link 18 and analog modem 17 to be the Internet, however, these components are merely part of the land-

based transmission path. Specifically, Kikinis discloses Internet 24 connected to the proxy-server 29 via a digital link 22 and digital link 20, PSTN cloud 15, analog link 18 and analog modem 17 serves as the land-based path between the client connecting equipment 11 and the network equipment 13. Therefore, digital link 20, PSTN cloud 15, analog link 18 and analog modem 17 of Kikinis are not the Internet. Accordingly, is it respectfully submitted that claim 1 is allowable over Kikinis.

Regarding to claims 5 and 6, these claims are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 5 and 6 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

Regarding claims 7 and 13, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 7 and 13. Accordingly, is it respectfully submitted that claims 7 and 13 are allowable over Kikinis for the same reasons as set forth above with respect to claim 1.

Regarding to claims 11, 12, 17, and 18, these claims are dependent upon independent claims 7 and 13. Thus, since independent claims 7 and 13 should be allowable as discussed above, claims 11, 12, 17, and 18 should also be allowable at least by virtue of their dependency on independent claims 7 and 13. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1, 5-7, 11-13, and 17-18 be withdrawn.

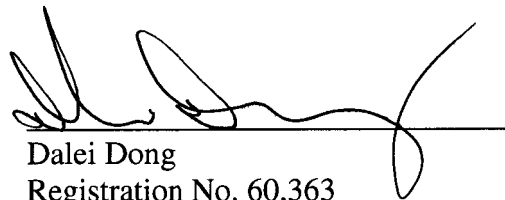
CONCLUSION

Applicant respectfully submits that the application is in condition for allowance and respectfully requests a notice of allowance for the pending claims. Should the Examiner determine that any further action is necessary to place this application in condition for allowance, the Examiner is kindly requested and encouraged to telephone Applicant's undersigned representative at the number listed below.

It is believed that no fees are due in connection with this response. However, if any fees are determined to be due, the Commissioner is hereby authorized to charge these fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,
HUNTON & WILLIAMS LLP

By:

A handwritten signature in black ink, appearing to read 'Dalei Dong', is written over a horizontal line.

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